

Page 10

1 was?  
 2 **A. No, I don't.**  
 3 Q. Have you reviewed any documents in  
 4 preparation for today's deposition?  
 5 **A. I reviewed the one page document that I**  
 6 **found and produced. That's the only document**  
 7 **that I reviewed.**  
 8 Q. That's the last document of Exhibit 2,  
 9 is that right?  
 10 **A. Yes, that's correct.**  
 11 Q. Did you author that document?  
 12 **A. Yes, I did.**  
 13 Q. What would be the purpose for you  
 14 creating this document?  
 15 **A. This was information that we passed on**  
 16 **to Jefferson-Pilot during the course of a file**  
 17 **review that we had at Jefferson-Pilot. We**  
 18 **created this for use at Jefferson-Pilot and that**  
 19 **would be the primary purpose.**  
 20 Q. Do you recall personally being engaged  
 21 in a file review at Jefferson-Pilot?  
 22 **A. I recall going to Jefferson-Pilot.**  
 23 Q. On how many occasions would you go to  
 24 Jefferson-Pilot to do file reviews?  
 25 **A. I don't recall.**

Page 11

1 Q. Did you go on an annual basis or more  
 2 frequently?  
 3 **A. I don't recall.**  
 4 Q. Or less frequently?  
 5 **A. I don't recall.**  
 6 Q. But you're certain this particular page  
 7 was generated as a result of your actual  
 8 physical visit to North Carolina at  
 9 Jefferson-Pilot reviewing files?  
 10 **A. Yes, I am.**  
 11 Q. How can you be so certain?  
 12 **A. The material was located in a file of**  
 13 **other Jefferson-Pilot claimants and was material**  
 14 **that would have been produced to**  
 15 **Jefferson-Pilot.**  
 16 Q. I'm not sure I understood you. What  
 17 material are you talking about?  
 18 **A. This was part of a group of file**  
 19 **reviews that we did at Jefferson-Pilot.**  
 20 Q. That document --  
 21 **A. That's correct.**  
 22 Q. -- was maintained by you in 2007 in a  
 23 file that relates back to some claims you  
 24 reviewed in 1997 at Jefferson-Pilot?  
 25 **A. It was kept on my computer. It had**

Page 12

1 **been transferred over when I moved from laptop**  
 2 **to laptop.**  
 3 Q. So that document there is actually a  
 4 electronic version of that document somewhere?  
 5 **A. Yes, there is.**  
 6 Q. Did you send that electronic version to  
 7 your attorney, Mr. Zahnd, or did you send him a  
 8 hand copy?  
 9 **A. Mr. Zahnd is not my attorney. He's a**  
 10 **co-worker.**  
 11 Q. At the time that was produced,  
 12 Mr. Zahnd wrote to me acting as your counsel,  
 13 right?  
 14 **A. I don't know that that's correct.**  
 15 Q. I'm not going to argue whether he's  
 16 your lawyer or not. Mr. Zahnd is the person  
 17 that sent that letter and document to me,  
 18 correct?  
 19 **A. That is correct.**  
 20 Q. Did he author this letter or did you  
 21 ghostwrite it?  
 22 **A. I did not ghostwrite it. I assumed he**  
 23 **authored it.**  
 24 Q. How did he come to possess the document  
 25 that he gave to me?

Page 13

1 **A. I gave it to him.**  
 2 Q. By hand or electronically?  
 3 **A. I believe I printed it out and gave it**  
 4 **to him by hand.**  
 5 Q. Do you still maintain the electronic  
 6 version of it?  
 7 **A. Yes, I do.**  
 8 Q. Do you know when it was created, the  
 9 document?  
 10 **A. No, I don't.**  
 11 Q. Did you go to Jefferson-Pilot in 1997  
 12 to do this review or was it earlier?  
 13 **A. I don't recall.**  
 14 Q. Can we conclude it's 1997 since you  
 15 asked for tax returns from '93 through '96?  
 16 **A. We can conclude it's after 1996. I**  
 17 **honestly don't recall beyond that.**  
 18 Q. If it were 1998 you would have  
 19 requested the '97 returns too, right?  
 20 **A. Possibly. It would depend on the facts**  
 21 **of the case and I just don't remember enough to**  
 22 **tell you. I can conclude it was after 1996.**  
 23 Q. And it would have been before sometime  
 24 in 1998 when you transferred responsibility for  
 25 the Jefferson-Pilot block of business to

Page 14

1 Mr. Dempsey?

2 **A. I don't recall specifically when that**

3 **transfer happened. But, yes, it would have been**

4 **before whenever the transfer happened.**

5 Q. The reserves you state in that

6 document, is that just ERC reserves for its

7 portion of the responsibility on the claim?

8 **A. I don't remember.**

9 Q. Can you tell from this document what

10 ERC's percentage of claim responsibility it was?

11 **A. It appears that there were two**

12 **policies, one of which was 67 percent ceded, one**

13 **that was 100 percent ceded.**

14 Q. And ceded for the jury means what?

15 **A. An insurance company can enter into a**

16 **relationship with a reinsurance company whereby**

17 **a portion of the risk is in effect insured by**

18 **the reinsurer. The reinsurer then reimburses**

19 **the cedent for that portion, whatever portion is**

20 **agreed amongst the companies. Ceded is the term**

21 **that's used to describe the transfer of that**

22 **portion to the reinsurer.**

23 Q. And does your record reflect what you

24 determined from your claim file review what the

25 period of the benefit was, benefit duration?

Page 15

1 **A. The document indicates lifetime. I**

2 **don't have independent recollection of that.**

3 Q. Would you have reviewed the policy to

4 come to that conclusion, the schedules to the

5 policy?

6 **A. Typically the answer to that would be**

7 **yes. I don't recall how the Jefferson-Pilot**

8 **files were organized. For the duration policy**

9 **it's also possible that there was a deck page in**

10 **the file as opposed to the whole policy. I**

11 **don't remember.**

12 Q. And what I will call it a To-Do List

13 items 1 through 7, is that a list of things that

14 you thought would be good or appropriate to do?

15 **A. Well, I don't necessarily agree that it**

16 **is a To-Do List. It is activities that when I**

17 **reviewed the file I thought would be useful in**

18 **terms of substantiating the information in the**

19 **file.**

20 Q. I call it a To-Do List. I was only

21 referring to 10ths. It's things that hadn't

22 been done, but you were recommending to be done

23 in the future, right?

24 **A. I don't recall.**

25 Q. Okay. At the bottom it says "Copy to

Page 16

1 DMS." Was this actually copied to DMS?

2 **A. I don't recall.**

3 Q. It was your intention to at least copy

4 it to DMS?

5 **A. The document would certainly indicate**

6 **that, but I don't have an independent**

7 **recollection.**

8 Q. Did you leave a copy with

9 Jefferson-Pilot?

10 **A. Yes. This would have been information**

11 **that was given to Jefferson-Pilot.**

12 Q. Are you mindful that there was a

13 consulting agreement between DMS and ERC in the

14 '90's?

15 **A. I am aware that that existed.**

16 Q. Have you ever seen one?

17 **A. No.**

18 Q. Did you ever make use of that

19 consulting agreement?

20 **A. I don't understand the question.**

21 Q. Did you ever direct claim files to DMS

22 for their review pursuant to the consulting

23 agreement in your capacity as claims counsel?

24 **A. I directed files to DMS for -- as DMS**

25 **assist the reinsured with looking at files.**

Page 17

1 **Whether it was pursuant to that consulting**

2 **agreement, I don't know.**

3 Q. Was that something you did hundreds of

4 times, dozens of times, couple times, rarely?

5 **A. I couldn't recall the specific number**

6 **of times.**

7 Q. Was it in the hundreds?

8 **A. I don't recall. That -- it seems like**

9 **hundreds would be a high number.**

10 Q. Did you direct that JP send the Kearney

11 file to DMS for its review?

12 **A. I don't recall. I would not have -- it**

13 **would be unlikely that I would have directed**

14 **them to do that.**

15 Q. Did you recommend?

16 **A. I don't recall.**

17 Q. Have you reviewed any other documents

18 other than what I have shown you as attached to

19 Exhibit 2?

20 **A. No, I have not.**

21 Q. Did you meet with Mr. Meagher and

22 Mr. Baty for several hours in preparation for

23 the deposition?

24 **A. No.**

25 Q. Did you meet with Mr. Meagher at all

Page 18

1 prior to the deposition today?  
 2 **A. Yes, I did.**  
 3 Q. Was that yesterday or just today?  
 4 **A. It was today.**  
 5 Q. Have you seen a privilege log that was  
 6 produced in this lawsuit?  
 7 **A. No, I have not.**  
 8 Q. -- from ERC? Sir, we've marked as  
 9 Exhibit 1 in Mr. Dempsey's deposition a  
 10 privilege log that was provided to me. And I  
 11 would ask that you -- have you seen one of these  
 12 before? Far left hand column is a sequence of  
 13 numbers listed numerically.  
 14 **A. Okay.**  
 15 Q. If you could turn to the page that  
 16 contains the reference to page 1466.  
 17 **A. Okay.**  
 18 Q. Do you have an understanding of what  
 19 "work product" means?  
 20 **A. Yes, I do.**  
 21 Q. Can you tell the jury what it means?  
 22 **A. Work product is a form of**  
 23 **attorney/client privilege where activities are**  
 24 **undertaken at the request of an attorney.**  
 25 Q. In anticipation of litigation?

Page 19

1 **A. In reasonable anticipation of potential**  
 2 **litigation.**  
 3 Q. Document 1466, can you tell the jury  
 4 what the date is associated with that document?  
 5 **A. The privilege log indicates 11-14,**  
 6 **1996. I have -- I don't recall this document.**  
 7 Q. But it indicates that you authored some  
 8 document to a Mr. Roberson, right?  
 9 **A. That's what the privilege log**  
 10 **indicates, correct.**  
 11 Q. You do know that Mr. Roberson was an  
 12 individual in the claims area of  
 13 Jefferson-Pilot?  
 14 **A. I don't recall the name Roberson.**  
 15 Q. And this suggest that on that date you  
 16 issued some sort of a recommendation that was in  
 17 anticipation of litigation on the Kearney claim,  
 18 right?  
 19 MR. MEAGHER: Objection to form.  
 20 **A. It was in -- well, I don't recall.**  
 21 Q. (By Mr. Roberts) I'm not asking if you  
 22 recall. I'm just saying this entry here on this  
 23 privilege log suggest that in November of '96  
 24 you sent a memorandum to Roberson that was a  
 25 recommendation on the Kearney claim in

Page 20

1 anticipation of litigation, correct?  
 2 MR. MEAGHER: Objection to form.  
 3 You can answer.  
 4 **A. I can see in the summary that it**  
 5 **indicates memorandum and in the subject**  
 6 **recommendation. I don't recall beyond that.**  
 7 Q. (By Mr. Roberts) And it suggest that  
 8 the document is protected from disclosure under  
 9 the work product doctrine, right?  
 10 MR. MEAGHER: Objection to form.  
 11 **A. It is in the privilege log.**  
 12 Q. (By Mr. Roberts) Do you recall  
 13 anticipating litigation against Mr. Kearney in  
 14 1996?  
 15 **A. No. I don't recall -- I don't recall**  
 16 **anything about this claim to be perfectly**  
 17 **honest.**  
 18 Q. Can you turn to the entry for  
 19 Document 316?  
 20 **A. Okay.**  
 21 Q. That suggest in May of '98 you had some  
 22 attorney/client and work product communications  
 23 regarding claim handling with a lawyer named  
 24 Bill Ellis, right?  
 25 **A. The log indicates that there was**

Page 21

1 **correspondence dated 5-5, 1998 from myself to**  
 2 **Mr. Ellis.**  
 3 Q. Actually the reverse from Mr. Ellis to  
 4 you?  
 5 **A. I'm sorry, excuse me.**  
 6 Q. Do you have any reason to believe  
 7 that's not accurate?  
 8 **A. I don't recall this document.**  
 9 Q. Do you recall any interaction with Mr.  
 10 Ellis?  
 11 **A. I know that we have used Mr. Ellis on a**  
 12 **couple of cases on varies subjects. I don't**  
 13 **recall this interaction.**  
 14 Q. When would have been the last time  
 15 prior to 2007 -- 2007 you received a subpoena.  
 16 So prior to 2007, when would have been the last  
 17 time you had any interaction of any nature with  
 18 regard to Chris Kearney or his claim?  
 19 **A. I don't recall. It would surprise me**  
 20 **if it was after 1998.**  
 21 Q. Do you recall with what frequency  
 22 receiving documents regarding the Kearney claim  
 23 from Jefferson-Pilot?  
 24 **A. No, I don't.**  
 25 Q. In the 1997 timeframe you don't know

Page 22

1 how many claims you had facilitated DMS  
2 reviewing?  
3 **A. I don't recall.**  
4 Q. You don't know if it's less than a  
5 handful or more than hundred?  
6 **A. The number hundred strikes me as high.**  
7 **Other than that I don't recall.**  
8 Q. Could it have been just a handful?  
9 **A. Probably was more than a handful.**  
10 Q. What directed you to make the decision  
11 to send a claim file to DMS for review?  
12 **A. Could be a variety of factors. It**  
13 **could relate to the staffing at the company that**  
14 **we were doing a claim audit at or had a**  
15 **relationship with. It could be indications in**  
16 **the file that there were -- that there was a**  
17 **need for further investigation that the primary**  
18 **company had not done. Could be a number of**  
19 **things.**  
20 Q. Jefferson-Pilot had its own claim  
21 department in '97/'98, right?  
22 **A. I recall them having their own claim**  
23 **department when I visited them. I can't be**  
24 **specific as to the '97 or '98 timeframe.**  
25 Q. We have marked as Exhibit 9 a July 8,

Page 23

1 '97 letter, Bates 502 from Shelton to DMS that  
2 refers to DMS for its review three files. Do  
3 you see that?  
4 **A. Yes.**  
5 Q. When you were in the process of  
6 reviewing, collecting documents pursuant to the  
7 subpoena you received, you came cross this  
8 document on Kearney, right?  
9 **A. Yes.**  
10 Q. And in that same file did you come  
11 across similar documents for Mr. Kahn and  
12 Mr. London?  
13 **MR. MEAGHER: I'm going to**  
14 **object. Again, I believe that information on**  
15 **the identity of other claimants should be**  
16 **redacted. I made that clear in Mr. Dempsey's**  
17 **deposition. You now have read their names into**  
18 **the record in direct contradiction to my**  
19 **position on that. So I think that should be**  
20 **redacted from the transcript also and this**  
21 **record redacted.**  
22 Q. (By Mr. Roberts) Sir, this is already  
23 a public record. It's attached to several  
24 pleadings in litigation.  
25 **A. I searched only for Christopher**

Page 24

1 **Kearney, so I don't know.**  
2 Q. You didn't stumble across a similar  
3 form for Mr. Kahn or Mr. London?  
4 **A. Again, I searched only for Mr. Kearney.**  
5 Q. You did an electronic search?  
6 **A. Yes.**  
7 Q. You did the word "Kearney" and the only  
8 hit was that particular document?  
9 **A. That's correct.**  
10 Q. And it was stored in a electronic file  
11 that relates back to your 1997 visit to North  
12 Carolina?  
13 **A. It relates back to a visit to North**  
14 **Carolina. I don't know the timeframe.**  
15 Q. Sitting here, do you recall whether you  
16 facilitated, recommended that these three claim  
17 files go to DMS for its review?  
18 **A. No, I don't.**  
19 Q. When you would go review a claim file  
20 at Jefferson-Pilot, tell me what would happen  
21 physically?  
22 **A. We would arrange with Jefferson-Pilot**  
23 **for dates that would be convenient for us to be**  
24 **at Jefferson-Pilot. We would produce a listing**  
25 **of files that we wanted to review. We would**

Page 25

1 **send that to Jefferson-Pilot. We would travel**  
2 **to Jefferson-Pilot. Jefferson-Pilot would**  
3 **produce the files and we would review them.**  
4 Q. The files in total?  
5 **A. I can't say that every file we**  
6 **requested was produced. Some would be in the**  
7 **process of payment or in use such that they were**  
8 **not available at the times that we were there.**  
9 Q. But you did review Mr. Kearney's claim  
10 because -- claim file because you created that  
11 document?  
12 **A. Yes. And I don't have a recollection**  
13 **of doing that. The document certainly indicates**  
14 **that I did.**  
15 Q. You've spoken the first person plural  
16 about these visits to North Carolina. Did other  
17 people accompany you?  
18 **A. Mr. Dempsey accompanied me on at least**  
19 **one visit. And I believe Bob Lainer**  
20 **accompanied me on one visit as well.**  
21 Q. And you would just split up the work  
22 loads when you got there?  
23 **A. We would look at -- we would look at**  
24 **different files, yes.**  
25 Q. Sir, I apologize for making you wait.